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January 10, 2011

VIA FACSIMILE

JONATHAN D. LUPKIN

Honorable P. Kevin Castel
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10021

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1-11-11

Re: **GO SMILE, Inc. v. Dr. Jonathan B. Levine, D.M.D, P.C.
and Dr. Jonathan B. Levine, 10 CIV 8663 (PKC)**

Dear Judge Castel:

This firm, along with co-counsel at Barack Ferrazzano Kirschbaum & Nagelberg LLP, represents plaintiff GO SMILE in the above-referenced action. Pursuant to Local Rule 37.2 and this Court's oral direction to the parties at the conference held on December 16, 2010, we are writing to request leave to depose non-party witness Stacey Levine in advance of the January 20, 2011 preliminary injunction hearing. Ms. Levine is currently the only non-party whose deposition GO SMILE seeks.

Ms. Levine, Defendant Levine's wife and business partner, is a central witness whose testimony in this matter is highly relevant. Defendants themselves have conceded her significance; they identified Stacey Levine as a person with knowledge in response to four separate GO SMILE interrogatories. For example:

- Stacey Levine is named as "one of the two individuals [defendant Levine being the other] involved in the selection of GLO, G.L.O., Glo Science and the other Trademarks identified in Defendants' Response, dated December 14, 2010, to the court-ordered Interrogatory and the domain name www.gloscience.com" (Response to Interrogatory No. 1);
- Stacey Levine is identified the "individual who oversaw the website development of [www.jonathanblevine.com, www.gosmileaesthetics.com and www.gloscience.com]," (Response to Interrogatory No. 6); and
- Stacey Levine was identified as one of the individuals who supplied the requisite information to answer GO SMILE's interrogatories. (Response to Interrogatory No. 9).

Defendants further confirmed Ms. Levine's significance during a telephonic meet-and-confer with defense counsel on December 29, 2010. During that telephone conference, defendants' counsel referred to Stacey Levine as a

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Leave to
depose non-party
Stacey Levine is
granted.
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"main player" in connection with the issues involved in this lawsuit.

But defendants' verbal and written concessions as to Stacey Levine's importance, themselves dispositive as to why her deposition is warranted, are not the only evidence as to her centrality as a witness. Emails recently produced by defendants demonstrate that Stacey Levine had integral involvement in the development of product packaging, users' manuals and promotional materials for distribution to the press and others. *See, e.g.* Documents bearing Bates designation D0023002 (April 12, 2010), D0023013 (April 14, 2010), D0023065 (April 26, 2010), D0023085 (April 27, 2010), D0023247 (May 18, 2010), D0023466-67 (October 24-26, 2010), and D0023753-55 (November 30 - December 1, 2010).¹

Given the documented extent of her knowledge on key issues in this case, we respectfully request that the Court grant GO SMILE leave to depose Stacey Levine. We are available to discuss this issue at the Court's earliest convenience, and we thank the Court in advance for its prompt consideration of this matter.

Respectfully,

Jonathan D. Lupkin

cc: Counsel of Record (via e-mail)

¹ Pursuant to the operative confidentiality order entered in this case, defendants have designated all of these e-mails as "Confidential - Attorneys' Eyes Only." If Your Honor is so inclined, we will arrange to provide the Court with access to these emails for its review.